

SMOKING (CHILDREN IN VEHICLES) (SCOTLAND) BILL – JIM HUME MSP

SUMMARY OF CONSULTATION RESPONSES

This document summarises and analyses the responses to a consultation exercise carried out on the above proposal.

The background to the proposal is set out in section 1, while section 2 gives an overview of the results. A detailed analysis of the responses to the consultation questions is given in section 3. These three sections have been prepared by the Scottish Parliament's Non-Government Bills Unit (NGBU). Section 4 has been prepared by Jim Hume MSP and includes his commentary on the results of the consultation.

Where respondents have requested that certain information be treated as confidential, or that the response remain anonymous, these requests have been respected in this summary.

In some places, the summary includes quantitative data about responses, including numbers and proportions of respondents who have indicated support for, or opposition to, the proposal (or particular aspects of it). In interpreting this data, it should be borne in mind that respondents are self-selecting and it should not be assumed that their individual or collective views are representative of wider stakeholder or public opinion. The principal aim of the document is to identify the main points made by respondents, giving weight in particular to those supported by arguments and evidence and those from respondents with relevant experience and expertise. A consultation is not an opinion poll, and the best arguments may not be those that obtain majority support.

Copies of the individual responses are available on the following website: <http://jimhume.org/en/document/consultation-responses>.

Responses have been numbered for ease of reference, and the relevant number is included in brackets after the name of the respondent.

A list of respondents is set out in the Annexe.

Contents

SECTION 1: INTRODUCTION AND BACKGROUND	3
SECTION 2: OVERVIEW OF RESPONSES	5
SECTION 3: RESPONSES TO CONSULTATION QUESTIONS	7
General aim of proposed Bill	7
The need for legislation	9
Advantages and disadvantages of the legislation	12
Age of the child	14
Age of the offender.....	17
Penalties	18
Financial implications	21
Impact on equality	23
Implementation.....	26
Any other comments	26
SECTION 4: MEMBER'S COMMENTARY.....	28

SECTION 1: INTRODUCTION AND BACKGROUND

Jim Hume's draft proposal, lodged on 28 May 2013, is for a Bill to:

prohibit, in Scotland, smoking in private vehicles while a child under 16 years of age is present.

The proposal was accompanied by a consultation document, prepared with the assistance of NGBU. This document was published on the Parliament's website, from where it remains accessible:

<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/29731.aspx>.

The consultation period ran from 28 May to 30 August 2013.

The following organisations and individuals were sent copies of the consultation document or links to it:

- All MSPs
- 14 NHS Boards
- British Heart Foundation
- British Lung Foundation Scotland
- BMA Scotland
- Chest Heart and Stroke Scotland
- ASH Scotland
- Royal College of Physicians
- Royal College of Physicians of Edinburgh
- Cancer Research UK
- Roy Castle Lung Cancer Foundation
- Children in Scotland
- Save the Children UK
- Scotland's Commissioner for Children and Young People
- Children's Parliament
- Dr Sean Semple (Scottish Centre for Indoor Air, Division of Applied Health Sciences, Aberdeen University)
- Dr Neneh Rowa-Dewar (Centre for Population Health Sciences, University of Edinburgh)
- Dr Deborah Ritchie (School of Health in Social Science, University of Edinburgh)
- Professor Linda Bauld (Professor of Health Policy, University of Stirling)
- Dr Laura Jones (Lecturer of Public Health, Epidemiology and Biostatistics, University of Birmingham)
- Simon Clark (Director, FOREST)
- Automobile Association
- Royal Automobile Club
- Chief Constable, Police Scotland
- Raymond Pawson (Professor of Social Research Methodology, University of Leeds)

- Charlie Common¹
- Jan Robertson²
- Scottish Grocers' Federation

The consultation was launched at a press conference held in the Scottish Parliament on 28 May 2013.

The consultation exercise was run by Jim Hume's parliamentary office.

The consultation process is part of the procedure that MSPs must follow in order to obtain the right to introduce a Member's Bill. Further information about the procedure can be found in the Parliament's standing orders (see Rule 9.14) and in the *Guidance on Public Bills*, both of which are available on the Parliament's website:

- Standing orders (Chapter 9):
<http://www.scottish.parliament.uk/parliamentarybusiness/26514.aspx>
- Guidance (Part 3):
<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/25690.aspx>

¹ Chief Superintendent (retired), formerly served with Lothian and Borders Police, gaining experience as a Territorial Commander, as Commander for the Force's Operations Division (encompassing Traffic Branch) and as a member of the Association of Chief Police Officers in Scotland (ACPOS) Road Policing Business Area.

² A member of the public who was sent a copy of the consultation on request.

SECTION 2: OVERVIEW OF RESPONSES

In total, 161 responses were received, with 88 being submitted direct to the member and a further 73 being completed through an online survey conducted by the British Heart Foundation, which linked to the full consultation document and asked identical questions.

A clear majority of the responses to the proposal were supportive. Bodies representing tobacco manufacturers and responses from pro-smoking organisations were not supportive of the proposal while responses from NHS organisations, academics, charities and public sector professional organisations were in favour.

Of the 73 responses received through the British Heart Foundation's online survey, 70 (96%) were in support of the proposal, two (3%) were against, and one (1%) was undecided.

This summary, except where indicated otherwise, is based on the 88 responses submitted direct to the member.

A number of submissions were submitted individually yet appeared to be coordinated: responses 42 to 45 were from "researchers in the field of tobacco control"; responses 48 to 50 were received individually from members of the "Respiratory Group at the University of Aberdeen"; 60 and 61 were submitted by Cancer Focus Northern Ireland and Action on Smoking and Health (ASH) Northern Ireland respectively, and submissions 82 to 86 were received from individuals who are part of the Glenrothes and North East Fife Community Health Partnership.

The 88 responses can be categorised as follows:

- 12 (14%) from charities
- 28 (32%) from public sector organisations (e.g. Scottish/UK Government, Govt agency, local authority, NDPB)
- 4 (4%) from private sector organisations (e.g. individual company or business)
- 3 (3%) from individual politicians (MSPs, MPs, MEPs, peers, councillors)
- 34 (39%) from private individuals (members of the public)
- 4 (4%) from academics or researchers
- 3 (3%) from campaign or pressure groups

There was one anonymous submission (81) and one confidential submission (77).

A key theme of those supporting the proposal was the protection of the health of a vulnerable section of society, with responses arguing that the proposal, if enacted, would help to redress health inequalities. While a small number of respondents argued that the proposal would infringe on the rights of the individual, many believed that such rights were outweighed by a child's right to a safe and healthy environment.

A small number of those responding criticised the scientific evidence regarding exposure to second hand smoke, while most of those in favour cited this evidence as a key reason for supporting the proposal.

A few respondents urged the member to consider the impact of the proposed legislation on Travellers and holiday-makers who use motorhomes.

While a clear majority of respondents agreed that protecting children from second hand smoke was a desirable outcome, a small number did not believe that legislation was an appropriate way forward. They would prefer to see education campaigns.

Some of those responding to the consultation identified issues with policing and enforcing the proposed legislation – highlighting difficulties with identifying the age of passengers and the age of the offender. Some pointed out that legislation on driving while using a mobile device is routinely flouted. On the other hand, many respondents likened policing the proposed ban to policing seatbelt and mobile device legislation and pointed out that similar laws in other countries had been shown to be effective.

SECTION 3: RESPONSES TO CONSULTATION QUESTIONS

This section provides a detailed analysis of responses to each question in the consultation document.

General aim of proposed Bill

Part 1 of the consultation document outlined the aim of the proposed Bill and what it would involve. Respondents were asked:

Question 1: Do you support the general aim of the proposed Bill (as outlined in Part 1 above)? Please indicate “yes/no/undecided” and explain the reasons for your response.

All respondents answered this question, with strong support for the proposal.

- A significant majority – 66 (75%) of the 88 respondents, supported the proposed Bill.
- Sixteen (18%) were opposed to the proposal in principle.
- The remaining six (7%) did not specifically indicate their support or opposition but three implied support and three implied opposition.

Combining the direct consultation responses with the British Heart Foundation’s survey gives an overall total of 136 of 161 respondents (84%) being in favour of the proposal, with 18 (11%) opposed and seven (4%) undecided or not expressing a clear opinion.

The main reasons given for supporting the proposed Bill were:

- Protection from secondhand smoke is afforded through the legislation on smoking in public places; this proposal offers protection from associated health risks to children, a vulnerable section of society, where they can’t choose an alternative means of transport
- There is a strong body of evidence based on significant research and statistics
- A good level of public support for such measures
- It would address health and age inequalities
- Evidence that legislative change, such as the Smoking, Health and Social Care (Scotland) Act 2005, can be an effective way of reducing smoking-related ill-health.

A number of respondents acknowledged that the consultation was being brought forward as a matter of public health and children’s rights, and provided comments accordingly:

- [The proposals] are a positive step to improve the health of a vulnerable population. [Dr G B Drummond (10)]

- To protect the health of the children of Scotland as outlined in the UN Declaration on the Rights of the Child, the WHO Framework Convention on Tobacco Control, and other health clauses in international treaties. [Prof Judith Mackay, Asian Consultancy on Tobacco Control (20)]
- Children and young people should be protected from the health risks posed by exposure to second hand tobacco smoke in confined spaces. [The Royal Environmental Health Institute of Scotland (22)]
- This is a key children's rights issue and one which, if implemented, will help to protect Scotland's children and young people from the harmful toxins contained in second hand smoke ... [which] can cause lifelong health difficulties for children and the fact that this occurs in confined spaces adds to the problem as the effects of second hand smoke are more concentrated. [Scotland's Commissioner for Children and Young People (26)]
- The proposals have the potential to address health and wellbeing concern. [The Law Society of Scotland (38)]
- A ban on smoking in cars with children is likely to bring numerous health benefits to children in Scotland, similar to those which followed the introduction of Smokefree Legislation. [Cancer Research UK (41)]
- Children should be protected from SHS exposure in cars as it poses a significant risk to their health and would involve only a temporary suspension to adults' autonomy to smoke. [Researchers in the field of tobacco control (42 to 45)]
- We have made great strides in improving the quality of the air we breathe when we are outdoors or at work in Scotland, yet we continue to expose children to extremely high levels of pollution from cigarettes when they are in cars with a smoker. [Respiratory Group at the University of Aberdeen (48 to 50)]
- Despite campaigns and publicity regarding this issue many smokers and non-smokers do not realise the damage and impact that smoking in cars can have on children's development and growth, and to what extent their health can be compromised. [NHS Ayrshire and Arran (55)]
- Protecting children from the impact of second-hand smoke in vehicles would help safeguard the health of future generations. [NHS Lothian Tobacco Strategy Project Board (75)]

Others in support of the proposal took the opportunity to expand on their views and put forward arguments for extending any measures to protect other vulnerable groups or for an outright ban:

- Whilst it is felt that the outline and argument for the ban to be specific to under 16s and the reasons are clear for this, we do feel that there needs to be some provision for over 16s who may have Learning Difficulties/Disabilities. [NHS Western Isles (11)]
- We would also support measures to protect adults from passive exposure in vehicles. [Royal College of Physicians (24)]
- Although the BMA believes that there should be an outright ban on all smoking in vehicles, regardless of the age of passengers, the BMA welcomes the proposed offence of failing to prevent smoking in private vehicles when children are present. [BMA Scotland (27)]

- Protecting both adults and children would... remove any ambiguity in this area and enable enforcers to carry out their role without the need for proof of age. [Fresh (Smoke Free North East) (54)]

Respondents against the proposal referred to a lack of evidence to support the member's assertions and that any such ban would restrict activity in private property:

- The "scientific evidence" used to justify it is spurious at best and much of it is downright fabricated by Pharma-funded front groups. It is also profoundly illiberal – the State should have no say in such aspects of people's lives... let alone in their private property. [James Burkes (29)]
- This is yet more encroachment on the rights of 20% of the population to participate in a perfectly legal activity, with no firm scientific evidence against it. [Paul Herring (30)]
- According to research, relatively few adults smoke in a car with children. Legislation would be yet another example of government interfering unnecessarily in people's private lives. [FOREST (67)]
- It is our view that it is inappropriate for a government to seek to dictate the consumption of adults of a legal and already heavily regulated product in the privacy of our own homes or vehicles. [Japan Tobacco International (68)]
- There is no credible evidence that further restrictions will reduce consumption or prevent children from starting to smoke. [Imperial Tobacco (76)]
- This proposal as set out is in contravention of Article 8 of the European Human Rights Convention unless irrevocable scientific evidence of harm can be proven. [The International Coalition Against Prohibition (TICAP) (79)]
- If the aims of the policy are as stated in the consultation, then balanced, informative campaigns to educate would be a far better option. [Anonymous (81)]

The need for legislation

Respondents were asked for their views on whether legislation was a desirable option, or whether they felt that there was an alternative way to achieve the aims of the proposal.

Respondents were also invited to comment on any advantages or disadvantages of the proposed legislation.

Question 2: Do you agree that legislation is a necessary and appropriate means of addressing the issues identified?

All 88 direct respondents addressed this question, to varying degrees.

- Fifty-seven (65%) agreed that legislation was appropriate. Included within this figure are two responses [38 and 56] that incorporated caveats to their submission. These will be explored below.
- Twenty (23%) disagreed with the need for legislation. Five of these [Glenrothes and North East Fife Community Health Partnership, NHS Fife (82

to 86)] qualified their disagreement: again, these will be discussed in more detail later in this section.

- Of the remaining 11 (12%) responses, while the question wasn't addressed specifically, agreement was implicit within six, with disagreement implied within five.

Combining the direct consultation responses with the British Heart Foundation's survey gives an overall total of 125 of 161 respondents (78%) agreeing that legislation is necessary and appropriate, 23 (14%) disagreeing and 13 (8%) undecided or not expressing a clear view.

The most common views put forward by those supporting the use of legislation centred primarily on how legislation has been adopted elsewhere and that it can be used not as a stand-alone tool, but together with initiatives including education and awareness raising.

Comments included:

- Legislation has been adopted to good effect in other countries, with good evidence that such laws are helpful.
- Legislation will provide a solid foundation on which to build campaigns and awareness raising initiatives.
- No evidence that a voluntary code of practice does anything.
- Success/positive impact of the smoking ban.

NHS Dumfries and Galloway (34) considered that parents would have more concern for the health of their children than themselves and, consequently, "parents who would usually smoke in their vehicles will accept the measure".

Broadening this further, the British Heart Foundation Scotland (40) believed that "there is likely to be a high level of public support for this legislation", citing a number of studies/reports. It also suggested that support increases post-implementation. These views were echoed by Cancer Research UK (41).

The Law Society of Scotland (38) offered additional points for discussion "to ascertain whether the type of legislation proposed is either necessary or appropriate and will fulfil the aims and objectives that are being sought".

- Nature of the proposed legislation. The Society asked whether the proposal was a natural progression from the Smoking, Health and Social Care (Scotland) Act 2005 which, it acknowledged, produced "unexpected but positive results" with compliance "much better than anticipated with both non-smokers and smokers in favour of the legislation. ... from this it can be inferred that the Scottish public does agree that [second hand smoke] is an intrusion and places unreasonable risk on another person's health and wellbeing and it is this that provides the justification and support for legislation".
- Education and prevention of smoking. The Society submitted that "a combined approach is generally regarded as more effective and provides a more targeted response in changing patterns of smoking behaviour and

promoting tobacco control". It cited policies of the General Dental Council and General Medical Council, which provide that their members offer smoking cessation advice as mandatory to patients who are smokers.

- Third-hand smoke. The Society suggested that further consideration be given to the scenario where a parent smokes in the vehicle when the child is not present, noting that the child will still be exposed to the smoke if it enters the vehicle shortly thereafter.

The Institute of Occupational Medicine (56) agreed that legislation would be appropriate but was not sure whether it was necessary as "we do not know what other approaches have been tried in Scotland and elsewhere, in order to limit children's exposure, and what has been the result".

While supporting the general aim of the proposed Bill, Action on Smoking and Health (ASH) (72) felt that "it would have been helpful if the consultation had been broadened out to explore both legislative and non-legislative options".

Comments from those who felt that legislation would not be appropriate or necessary included:

- The "issues" identified are the product of years of misinformation and junk science from [the] tobacco control industry... This is not proportionate or necessary... [28, 79]
- Existing legislation in this area is unnecessary and has been profoundly socially divisive and economically damaging. [James Burkes (29)]
- There is absolutely no evidence from the past 50 years that shows any harm done to anyone by adults smoking in their cars. [Lyn Ladds (37)]
- Tobacco Manufacturers' Association (TMA) (51) and FOREST (67) cited other studies to support their view that this is a "disproportionate response to [a] relatively rare problem".
- Japan Tobacco International (68) stated that "any proposal to ban smoking in private domains is disproportionate, unjustified and unnecessary ... and likely to amount to ... an interference with the right to respect for private life protected by national law (the Human Rights Act 1998) and international law (including Article 8 of the European Convention on Human Rights)".
- One respondent [John Elliott (33)] felt that results could be achieved by "education, peer pressure, denormalisation etc".
- Glenrothes and North East Fife Community Health Partnership, NHS Fife (82 to 86) advocated a similar approach, suggesting that, while there may be scope for limited legislation, there should be a campaign to influence behaviour. These respondents believed that "concerted public/community health initiatives to support behaviour change/modification would be a better and more positive use of resources".

Advantages and disadvantages of the legislation

Question 3: What (if any) would be the main practical advantages of the legislation proposed? What (if any) would be the disadvantages?

The immediate protection of children from the harmful effects of toxic chemicals was an advantage identified by most respondents. It was also pointed out that children of non-smokers are less likely to take up the habit themselves and that this provided a life-long health benefit.

Many of those in favour of the legislation argued that it would lead to cost savings. The British Lung Foundation (58) set out some figures to illustrate the potential savings—

“Passive smoking results each year in more than 165,000 new episodes of disease of all types amongst children, 300,000 primary care consultations, 9,500 hospital admissions and around 40 sudden infant deaths. This comes at a total cost of more than £23 million per year in primary care visits, asthma treatment and hospital admissions in the UK. During the first three years of smoke-free legislation in England, there have been 1,900 fewer admissions for adult asthma per year, demonstrating the direct savings which can be made by reducing exposure to second-hand smoke. Bringing in this ban therefore has the potential to bring about savings to the health system and an improvement in children’s health and their health going into adulthood.”

Some other advantages put forward were:

- It sends a clear message to the people of Scotland that exposing children to tobacco smoke is harmful and unacceptable. [The Royal Environmental Health Institute of Scotland (22)]
- A reduction in the uptake of young people smoking and it would contribute to a culture where smoking is not seen as the norm. [Multiple respondents]
- It would raise public awareness of the health risks associated with SHS exposure and about the harmful impact of smoking near children in any context, not just inside vehicles. [Multiple respondents]
- Children often do not have the choice about their method of transport and cannot act to protect their health and interests in the same way adults can do. [Children in Scotland (70)]
- All occupants of the car (not just children) will also gain health benefits. [Institute of Occupational Medicine (56)]
- The evidence is stark ... better health for our children now and in adulthood. [Scotland’s Commissioner for Children and Young People (26)]
- It will encourage people to give up smoking and even if they choose to continue, they will be more aware of the dangers of second hand smoking and adjust their habit accordingly. [Scotland’s Commissioner for Children and Young People (26)]
- Compliance with the 2005 Act [the Smoking, Health and Social Care (Scotland) Act 2005] indicates that the Scottish public is willing to recognise

the harmful effects of smoking not only on themselves but the risk it imposes upon other people's health and wellbeing. [The Law Society of Scotland (38)]

- The current proposals are a good opportunity ... to hold a debate in Scotland on the most effective measures to protect people, especially the vulnerable, from these harms. [Scottish Coalition on Tobacco (66)]
- A further discouragement to parents continuing to smoke. [Robin Bennett (71)]
- Statistical evidence can be used for future research and legislation. [2,18]

Disadvantages envisaged by respondents included difficulties with enforcing the legislation and some cited the cost of developing, publicising and enforcing the ban – although many pointed out that cost savings accrued by the NHS in the reduction of admissions and so on would more than outweigh any initial outlay. In relation to enforcement, it was argued that legislation such as that prohibiting driving while using a mobile phone and the seatbelt legislation relied on observation and were considered successful. Police had already established tried and tested methods such as campaign days and short term initiatives which had been utilised to enforce legislation successfully in the past.

Charlie Common (4) argued that the Police are skilled and experienced in working with partners such as health professionals and would naturally seek to raise awareness and prevent offences in the first place. It was further pointed out that enforcement data from other countries demonstrated that it was possible to enforce legislation of this sort.

Some respondents argued that the proposed legislation would absorb police time during a period of resource constraint. Others argued that any ban would be enforced at the same time as the police currently enforce seatbelt law and the law on hand held devices.

While a few respondents raised the issue of the proposed legislation impinging on personal freedoms, others argued that the rights of children in relation to their health and welfare along with other societal benefits outweighed this.

Some comments on disadvantages were put forward, particularly with regard to potential difficulties in ascertaining the age of any child present:

- A fourteen to sixteen year old can look like an adult and it will be difficult for the police to enforce if older children are in the car. It can be very difficult also to see very young children in the car as their visibility is limited by their size. [NHS Western Isles (11)]
- The enforcing officers would need to see both the offence taking place and ascertain the age of any child or children present. [The Law Society of Scotland (38)]
- A practical disadvantage would be in assessing a child's age. [BMA Scotland (27)]
- Difficulties of enforcement ... may include accurately determining the age of teenagers present in the car or visually confirming the presence of small children in the back seat of a passing vehicle. [Action on Smoking and Health (ASH) Wales (32)]

- Possible unintended side effects such as a hardening of attitudes among smokers. Experience of the ban on smoking in public places is strongly that this is not what happened, but rather that many smokers saw this as an aid to stopping smoking or to reducing the amount smoked. Some polling / survey research beforehand to check on this might be useful, if it has not already been done. [Institute of Occupational Medicine (56)]
- The legislation may impinge on individual rights and freedoms. [The International Coalition Against Prohibition (TICAP) (79)]
- Smokers would be stigmatised. [82-86, 39]

Some respondents felt that the legislation did not go far enough and should ban all smoking in vehicles, for example.

Some comments on those who wished to see more extensive legislation were:

- An outright ban on smoking in private vehicles would help enforce any extension to current legislation, as there would be no need to differentiate whether a child, present in a vehicle, was above or below a prescribed age. This would eliminate any uncertainty for enforcers. An extension to the ban would also promote the message that tobacco smoke is harmful regardless of who is present in the vehicle at any time, and comprehensively address the issue of road safety. [BMA Scotland (27)]
- The catastrophic results of acute exposure to second hand smoke, including stroke and heart attack, are most likely to be suffered by adults, not children, and so it is to be regretted that this proposed law will fail specifically to protect those at most serious risk. [Cancer Focus Northern Ireland (60) and ASH Northern Ireland (61)]
- As described in point 1, the current draft proposal may reinforce the idea that it's ok to smoke in the car when the children are NOT in the car and so this proposal does not completely protect children from second-hand smoke. [NHS Highland (65)]

Age of the child

Respondents were then asked to consider the age at which children and young people should be afforded protection under the proposal, and also at what age they should be regarded as committing an offence.

Question 4: Do you agree that a ban should apply to smokers while in a car with children under 16 years of age?

Of the 88 respondents, 68 answered this question. Of those 68 responses, 54 (79%) agreed, to varying degrees, while 14 (21%) disagreed. As set out below, a number of respondents agreed that the ban should apply to the presence of children below 16 but also felt that the ban could go further and encapsulate those between 16 and 18 or even extend to all ages.

All 73 respondents to the British Heart Foundation's survey answered this question. Sixty-nine (94%) agreed that the ban should apply to smokers while in a car with children under 16.

This gives an aggregate of 123 out of 141 respondents (87%) in agreement that any ban should apply to smokers while in a car with children under 16 while a total of 18 (13%) disagreed.

Comments provided in support of an age threshold of 16 included:

- Age 16 is a recognised milestone in Scotland, covering a number of areas, such as legal capacity and the right to marry. [Charlie Common (4)]
- On the grounds that this is the age when a person is normally considered to have the ability and capacity to make informed choices. [52, 73, 75]
- In Scotland, 16 is generally viewed as the age of consent. We would therefore accept 16 as an appropriate age definition for the purposes of this proposed legislation. [British Lung Foundation Scotland (58)]
- Children below 16 have fewer options in terms of travel and may have little say in how they move from one location to another. [Respiratory Group at the University of Aberdeen (48, 49, 50)]
- The rationale is well presented as to why the age is 16 rather than 18. [NHS Ayrshire and Arran (55)]

A number of respondents indicated support, on the basis that they support the proposal generally, but also offered options for extending the proposed threshold:

- It may be beneficial to extend it to cover vulnerable adults who do not understand the harm of passive smoking and lack the capacity to consent to someone smoking in the car with them. [James Macfarlane (12)]
- More appropriate to extend the age to 18, where this would be in keeping with the age that young people can legally access tobacco products. We would also wish to see the inclusion of children and young adults affected by disability, as they are often neglected when such issues are considered. When considering the needs of children and young people leaving care, the Children and Young Persons (Scotland) Bill seeks to increase the age that they can seek assistance to 25. We would suggest that for this vulnerable group, this age would also be appropriate. [Common Thread Ltd (21)]
- We support the logic [behind this proposed age limit]. However, we note ... that several Canadian State administrations have extended this to 18 or even 19 years old, and we would also support [a move] to this position. That may provide a better match with recent Scottish legislation on tobacco sales to and by minors. Common age limits may ease understanding and implementation. [NHS Grampian (25)]
- We would prefer to see the age limit raised to 18. [Cancer Research UK (41)]
- We asked our members whether they agreed that 16 was the correct age or whether 18 was more appropriate, given it is the age at which young people can legally buy tobacco. The result was an approximately 50:50 split. [Children in Scotland (70)]

Four respondents who indicated clear support for the proposal in general did not agree with the proposed age threshold of 16, believing that it should be raised to 18 in order to be consistent with other legislation:

- Scotland's Commissioner for Children and Young People (26) suggested that the age should be extended to 18, arguing that "this legislation should be consistent with the age at which young people are legally permitted to purchase tobacco products or cigarettes and for shops and supermarkets to sell such products to them. In January 2010 the Tobacco and Primary Medical Services (Scotland) Bill was passed by the Scottish Parliament. I see no reason to move away from this age".
- We believe that this legislation should cover everyone aged 18 years or under.... 18 is the legal age at which a person can buy tobacco. We believe it is right that everyone under the age of 18 is also protected from SHS exposure, in the same way as they should be protected from the health harms associated with consuming it. [British Heart Foundation Scotland (40)]
- The ban should be extended to those who carry under 18s (in line with Tobacco and Primary Medical Services (Scotland) Act 2010) and pregnant women at all times. This would go further in protecting children and young people and provides a clear, consistent message. [NHS Highland (65)]
- The focus of the arguments put forward [in the consultation] culminates in "choice and biology". Whilst we acknowledge that these elements are valid ... we take the view that a child should be anyone under the age of 18. This would provide another two years of protection in the context of the proposals. We suggest that a more comprehensive alternative may be that rather than having age as the determinant, instead consider the vulnerability and the capacity of an individual to give or refuse their consent to travelling in a vehicle where someone is smoking. [The Law Society of Scotland (38)]

Others felt that there should be no age threshold:

- Yes, although we would like to see the ban extended to all cars carrying any passengers. [Prof Judith Mackay, Asian Consultancy on Tobacco Control (20)]
- [We support] the general aim of the proposed Bill but question whether restricting its scope to protecting only children is the best way forward. While children are particularly vulnerable to the health effects of secondhand smoke, so too are some adults, for example, those with heart disease, asthma, or other respiratory disorders. [60, 61, 72]
- We would suggest the scope for the ban should be expanded to other vulnerable groups whom the law also considers to be worthy of special protections from harms caused by others. This includes "adults at risk", who are particularly vulnerable because they are unable to safeguard their own well-being or interests, and who may have a disability, illness or impairment that means they are more vulnerable to being harmed. [64, 69, 87]
- It would be a start but would prefer for there to be an outright smoking ban in cars due to the health impact for all. [15, 27]
- This is using the tobacco control industry legislation sledgehammer to crack a nut. Most adult smokers already demonstrate such courtesy, and an education campaign would be more than sufficient. [Anonymous (81)]

Age of the offender

Question 5: Do you agree that the age of an offender shall be anyone aged 16 or over?

There were 70 responses to this question.

Forty-nine of those responses (70%) were supportive, 20 (28%) were not, while one (1%) was undecided.

A number of those agreeing qualified their agreement and took the opportunity to broaden the case for including other factors:

- We agree it should be over 16s, however, we feel that perhaps consideration should be given to over 16s with Mental Health or Learning Disabilities, who may have problems in the interpretation of the proposal. [NHS Western Isles (11)]
- Again, consideration may be given to the age of 18. However [we] would like to query if the law will apply to smokers who have learning disabilities or mental health problems as both these vulnerable groups are on the whole, statistically more likely to smoke. A fine may not be the best route for groups with these protected characteristics. [Fast Forward (39)]
- People under the age of 16 smoke so this should be considered too. The offender could be anyone at any age but the penalty should reflect this or responsibility should go back to parents. [Gayle Robertson (15)]
- While in theory, the offender should be any smoker of any age, as 15 year old smokers carry the same risk to young children as 16 year olds, in practice, we would be reluctant to call for under-age smokers to be criminalised, so would accept a cut-off at the age of 16. [Prof Judith Mackay, Asian Consultancy on Tobacco Control (20)]
- This depends on what age is agreed as a young person being a legally responsible “adult”. If it [is] agreed that this age is 16, it would follow that offenders can be aged 16 and over. [Children in Scotland (70)]

Two respondents [NHS Health Scotland (53) and Fresh (Smoke Free North East (54)], supporting the proposal in principle, didn't address the question specifically but did imply support in this area within their responses, raising similar points to those above, with respondent [54] in particular noting that “there are differing views on age limits among those who are calling for legislation to protect children in cars. Protecting both adults and children would remove any ambiguity in this area and enable enforcers to carry out their role without the need for proof of age”.

Of those responding to the British Heart Foundation's survey, 53 of the 73 respondents (73%) agreed that the age of the offender should be anyone aged 16 or over. This gives an aggregate of 143 responses, with 102 (71%) in agreement with the question, 36 (25%) not in agreement and 5 (3%) undecided

Eight respondents (11%) who support the proposal in principle disagreed with the question that the age of an offender shall be anyone over 16, primarily on grounds of consistency (i.e. based on their response to question 4):

- “No! Should apply to any age of smoker including under 16s!” [Glenrothes and North East Fife Community Health Partnership, NHS Fife (82 to 86)]
- Given the legal age to smoke in Scotland is 18 rather than 16, we would expect anyone under that age to be found smoking to be subject to that legislation. [Royal College of Paediatrics and Child Health Scotland (47)]
- We take the view that it would be more logical that the driver bears the responsibility to ensure no person smokes in the vehicle, where a child is present. [The Law Society of Scotland (38)]
- To ensure consistency, age 18 and over would be my preference. [Scotland’s Commissioner for Children and Young People (26)]

One respondent [NHS Highland (65)] was unsure, but wanted to see consistency in legislation.

Twelve respondents (17%) disagreed with the question, from the position of being against the proposal in principle. Some of those respondents did expand on their views:

- I believe that creating “an offender” out of someone for such an everyday act ... is outrageous. [James Burkes (29)]
- I cannot think of any activity that can be legal for someone to participate in on one day, then on their next birthday it would become illegal! [Paul Herring (30)]
- There is currently no provision in law that explicitly prohibits someone over the age of 16 from smoking in a private vehicle. To prosecute an individual for exercising this right would likely interfere with fundamental rights codified in national and international law, as outlined in our response to question 2. [Japan Tobacco International (68)]
- No. It is an offence for under 18 year olds to purchase tobacco products but the recreational use of these same products remains legal in law. [The International Coalition Against Prohibition (TICAP) (79)]
- This is an assumptive question which has no place in what is supposed to be an open-minded consultation. [Anonymous (81)]

Penalties

Those responding to the consultation were invited to consider the level of any fine that might be issued under the proposed legislation, and to what vehicles this should apply. The consultation outlined the rationale behind not proposing to issue penalty points.

It should be noted that on 16 August 2013, two weeks before the consultation closed, the fixed penalty for the offences which the member wishes to mirror in the proposed legislation was raised to £100.

Question 6: Do you agree with making the fine for an offence (£60) in line with offences for failing to wear a seat belt and the use of a hand-held device while driving?

Of the 88 respondents to the consultation, 71 addressed this question.

Of these 71, 54 (76%) respondents agreed with this question, with some noting that, since the launch of this consultation, the fine had risen to £100 but that the principle remains the same. Sixteen (23%) disagreed and one (1%) was undecided.

Of those responding to the British Heart Foundation's survey, 60 of the 73 respondents (82%) agreed with this question, with nine (12%) disagreeing and four (5%) undecided or expressing no clear view. This gives an aggregate of 144 responses, with 114 (79%) in agreement with the question, 25 (17%) not in agreement and 5 (3%) undecided or expressing no clear view.

Many of these respondents acknowledged that penalty points should not be applied as this is a health issue, not a road traffic offence.

Cancer Research UK (41) agreed with the proposal, "but with provision for escalating fines for repeat offenders".

Alternatively, NHS Forth Valley (16) suggested that the fine "could be reduced if the offender commits to attend a smoking cessation service".

Some respondents were unsure of the merits of levying a fine for failure to comply with any new law. They observed that "enforcement of the bill is not there as a revenue raising device" and that it may in any case be "self-enforcing". On the other hand, they also suggested that it "may be arguable that a £60 fine...may not be a sufficient deterrent ...". [Respiratory Group at the University of Aberdeen (48, 49, 50)]

An argument for the inclusion of penalty points, on the grounds of general safety was put forward by Gayle Robertson (15) and NHS Grampian (25).

Four respondents, who indicated clear support for the proposal in general did not agree with the suggested penalty, on different grounds:

NHS Western Isles (11) and British Lung Foundation Scotland (58) indicated their preference for workshops or similar educational short courses to be utilised for first time offenders—

"Guiding smokers to Smoking Cessation services and the workshops is perhaps a more valuable means of implementing this proposal rather than simply fining them with no support offered. Fining would be an option for those who refuse to attend workshops or cessation services." [NHS Western Isles (11)]

Commenting that the offence would not be treated as a driving offence, Children in Scotland (70) felt that "perhaps it would be more useful to relate or compare the fine to that imposed on those smoking in an enclosed space (£50)".

Dr Helen Harris, Fife Rheumatic Diseases Unit (5), said that she “would apply a higher tariff” but acknowledged that “this may not be acceptable to others”.

The majority of those who disagreed with the suggested fine approached it from being against the proposal in principle thus, by default, their position was that there should be no fine.

FOREST (67) stated its position that “the time and money required to achieve this non-result would be better spent, in our opinion, on education not coercion (ie legislation)”.

It was also argued that “any penalty imposed on an individual exercising their own choice to smoke would likely interfere with fundamental rights”. [Japan Tobacco International (68)]

Common Thread Ltd (21) was unsure, suggesting that “the penalties mentioned relate to an individual, and does take cognition of the potential long term harm inflicted upon victims of passive smoke. It could be argued that to expose a child to passive smoke is a child protection issue”.

Question 7: What types of vehicles should the ban apply to? Do you believe that these proposals should include convertible cars irrespective of whether the top is down?

Of the 88 consultation respondents, 69 answered this question. Fifty-one (74%) of those responding supported a ban on all vehicle types, including convertibles, while six (9%) offered qualified support while drawing attention to particular issues such as mobile homes. Twelve (17%) did not support a ban in any type of vehicle.

Combining the direct consultation responses with the British Heart Foundation’s survey gives an overall total of 119 of 161 respondents (74%) supporting a ban on all vehicle types, including convertibles, with 19 (12%) opposed, and 23 (14%) undecided or expressing no clear view.

Key arguments in favour of applying the ban to all vehicles, including convertibles, were:

- Simplicity of understanding and clarity of enforcement - it would provide a clear and transparent law with no grey areas or loop-holes [48-50, 55, 70]
- To introduce exceptions could lead to arguments about the extent to which windows are open and the car is ventilated for example. This also helps make it clear that the intention is to reduce children’s exposure to second hand smoke and that opening the window or roof is not enough [Children in Scotland (70)]
- Toxic chemicals from SHS [second hand smoke] will stick to materials in a car interior, including convertibles and are still therefore a threat to health. [NHS Lanarkshire (62)]

- Even if the top is down passengers can still be affected by drifting smoke [60 and 61]
- Ventilation is not an adequate safeguard from exposure to smoke and especially to particulate matter no matter how carefully they are ventilated at the time (windows down, sun-roof, targa-top or convertible) [NHS Grampian (25)]
- The legislation should refer to “vehicles” or “modes of transport” so that it is not just cars that are covered as this would be equivalent of a loophole in the law. [Steven Tummons (17)]
- Any exceptions would weaken the change in social norms the legislation would bring. [James Macfarlane (12)]

The Royal College of Paediatrics and Child Health Scotland (47) felt that an exception for convertibles when the top is down may not be unreasonable but qualified this view with the comment that if it was not possible to clearly draft the legislation to deliver a precise definition then a complete ban was appropriate.

Some respondents foresaw difficulty with mobile homes, particularly where this is a primary residence (see further discussion under question 9).

Respondents who were not supportive of the proposal argued that:

- it would be necessary to demonstrate the presence of ETS [environmental tobacco smoke] in open top vehicles before such a ban could be justified. [Imperial Tobacco (76)]
- the policy intention “has nothing to do with health”. [Lyn Ladds (37)]
- the proposal is illiberal [James Burkes (29)]
- the issue of convertible vehicles should be a matter for the Court to rule upon, with the onus upon the Defence to show that children being carried were not at risk of inhaling smoke. [Charlie Common (4)]

Financial implications

Question 8: What is your assessment of the likely financial implications (if any) of the proposed Bill to you or your organisation? What (if any) other significant financial implications are likely to arise?

The majority of responses to this question highlighted the likely cost savings to the NHS that would arise from improvements in health. These respondents felt that the NHS might initially incur some increased costs in supporting smoking cessation but this would be offset by greater savings in healthcare provision in time.

On the other hand, it was argued that greater costs would be incurred by Police Scotland in policing a ban (although some argued that on-going routine enforcement of other traffic legislation would cover this ban without incurring extra costs). Costs on the Scottish Government’s budget in advertising and promoting the ban were predicted. A reduction in cigarette sales, and hence reduced revenue for manufacturers, distributors and retailers, was also highlighted.

Comments included:

- We do not believe there will be significant financial implications resulting from enforcement of the Bill as enforcement can be carried out along with on-going routine enforcement of other traffic legislation. [Scottish Coalition on Tobacco (66)]
- There may be a short term increase in smokers attending stop smoking services requesting support to stop smoking which would have a small cost to the service, but this cost is inconsequential to the saving to be made in the longer term to NHS Boards from the reduction in treatments for diseases caused by second hand smoke. [NHS Forth Valley (16)]
- It is likely that it could result in demand for the smoking cessation services we provide; this may present an initial resource pressure to NHS Boards. Could result in an increase in tobacco related litter as people smoke in outdoor public spaces and this may present a resource pressure to local authorities initially. There should be a reduction in number of smokers and this will sustainably reduce healthcare cost in the long term and this justifies the potential short term resource pressures. [NHS Grampian (25)]
- We would hope that the proposed Bill would result in a reduction in the financial burden of smoking on the NHS. The costs to the NHS of SHS [second hand smoke] exposure in children are significant and the ban could help to minimise this. The Royal College of Physicians report *Passive Smoking and Children* estimates that 300,000 GP consultations and 9,500 hospital admissions per year are attributed to exposure to SHS, costing the NHS £23 million annually across the UK. [BMA Scotland (27)]
- “It will cost all Scottish taxpayers more for the pointless legislation to be tabled and drawn up; it will cost taxpayers more in administration costs; it will cost taxpayers more in enforcement costs; it will cost some taxpayers £60 a pigging throw. It is a huge waste of your time at our expense over a non-existent health 'threat'”. [Richard Puddlecoate (28)]
- Could the fines collected be ring fenced or ear marked for anti-smoking initiatives or for initiatives aimed at improving young people’s health? [Fast Forward (39)]
- The proposed bill may reduce the quantity of cigarettes smoked per day by smokers with consequent reductions in revenue for tobacco companies and retailers who sell cigarettes but given that the Scottish Government is committed to making Scotland a tobacco-free nation by 2035 this legislation is likely to have little financial impact outwith that broad governmental aim. At a wider health-care level we anticipate, given the findings of the Royal College of Physician’s report, that reductions in children’s exposure to SHS [second had smoke] is likely to reduce pressures on the NHS. We would expect to see some reduction in GP consultation rates and hospital admissions with the consequent financial benefits that would bring. [Respiratory Group at the University of Aberdeen (48-50)]

- a. There may be some reduction in tobacco sales and in revenue for the tobacco companies, presumably with associated increase in revenue elsewhere;
- b. There may be some costs to Government in introducing the legislation, e.g. in highlighting the effects on children of SHS – we look on this as money well spent; and
- c. Over time, there could be significant reductions in health care costs, and in parents needing to take time off work, or paying for childcare, or drawing on goodwill from family (grandparents?) and friends, for children who are off school ill. [Institute of Occupational Medicine (56)]
- Societal costs will be high – children will be made to walk much more, increasing the level of child pedestrian accidents, tourists will be put off coming to Scotland ... increased longevity does nothing but exacerbate the enormous costs to the health care system and probably bankrupt the pensions and welfare systems. [Michael Peel (88)]

Impact on equality

Question 9: Is the proposed Bill likely to have any substantial positive or negative implications for equality? If it is likely to have a substantial negative implication, how might this be minimised or avoided?

Sixty-eight out of a total of 88 respondents answered this question.

Several of those responding pointed out that lower socio-economic groups would be affected more by the legislation without taking a view on whether this was a good or a bad thing.

A majority of those answering identified a positive impact for equality as they envisaged that the legislation would improve the health and welfare of children in those socio-economic groups with a high prevalence of smoking. It was widely felt that the proposal would redress the health inequality that children in these groups are currently subjected to.

It was pointed out that the socio-economic group most likely to smoke with children in the car is the group with least resources, therefore fines would hit this portion of the community disproportionately. Balanced against this was the argument that individuals in this group have the most to gain from the legislation and parallels were drawn with the health benefits that have accrued – even in smokers – from the Smoking, Health and Social Care (Scotland) Act 2005.

Some respondents warned that the proposals may raise issues for some people and groups in Scotland - such as travelling communities - who have what would be classified as a vehicle for the purposes of this law as their primary home or residence. Careful drafting will be required to address this.

One respondent argued that the proposal “is likely to amount to an unjustified and disproportionate interference with fundamental rights, including those enshrined in the Human Rights Act 1998”.

Comments identifying positive impacts for equality included:

- There is a strong social gradient for non-smokers’ exposure to second-hand smoke - disadvantaged non-smokers are twice as likely to be exposed - and specifically in cars, 80% of people in the highest socio-economic groups report that smoking is not permitted in their car compared with just 54% of the lowest group. [60 and 61, 72]
- Children and young people from more socio-economically deprived areas are more likely to be exposed to second hand smoke. Therefore the proposed legislation could have a positive impact in reducing health inequalities if it encourages quit attempts and serves to further denormalise smoking. [Action on Smoking and Health (ASH) Wales (32)]
- There may be positive implications for equality in improving child health and welfare, particularly in socio-economic groups with high prevalence of smoking. [Frank Stewart (7)]
- It is reasonable to expect that a ban would contribute to reducing health inequalities by reducing exposure to SHS, which is highest in children from the lowest socioeconomic groups; their parents are more likely to be smokers, and more likely to smoke in private spaces such as the home and car. [BMA Scotland (27)]
- Smoking is strongly linked to deprivation and smoking prevalence is higher than the Scottish average in deprived areas. Children from lower socioeconomic groups, who are more likely to live with a smoker in the first place, continue to experience higher levels of exposure to secondhand smoke. Legislation which specifically protects children from exposure to secondhand smoke will start to redress this inequality. [Cancer Research UK (41)]
- As smoking is more prevalent among lower social classes then it will impact disproportionately on parents, particularly mothers, from lower social classes who have child-care responsibilities. On the other hand, evidence suggests that most smokers wish to quit smoking and therefore this legislation may disproportionately assist this same group in moving towards the benefits of quitting or having a smoke-free home. Given the benefits to health observed following the introduction of smoke-free legislation in 2006, the benefits of the proposed bill are also likely to extend to parents and other adults who are not exposed to SHS in cars. Research by the University of Glasgow indicated that even smokers were less likely to have a heart-attack after the introduction of smoking restrictions in enclosed public spaces. Smokers also benefit from not being exposed to SHS [Respiratory Group at the University of Aberdeen (48-50)]

- Achieving a significant reduction in smoking levels within this [the most economically deprived] section of society will require a step-change in behaviour. Legislation to end smoking in cars where children are present will play a vital symbolic and practical role in pursuit of this goal. [British Lung Foundation Scotland (58)]

Comments identifying potential negative impacts for equality included:

- unless the needs of disabled young people and young adults are formally recognised, then there exists the potential for them to be discriminated against. Simply stating that this Bill will only affect under 16 year olds fails to address the needs of this vulnerable group. [Common Thread Ltd (21)]
- It is acknowledged that it is not appropriate to legislate to prohibit smoking in private homes, yet this may be the result of the proposal (for those in the travelling community for example). This could result in this law having a negative equality impact. [Multiple respondents]
- Children most exposed to smoke in cars are also those most exposed to social inequality. This may mean that fines are disproportionately levied against the less well off. It may be wise to offset this by including some sort of warning system into the penalty structure. Perhaps a degree of latitude could be available to Police Scotland so that professional judgement can advise the decision about whether or not to fine for a first offence. [NHS Grampian (25)]
- Of course it will have substantial negative implications for equality – the equality of smokers, as human beings, to live their lives and go about their normal business without stress and interference from an ever increasing interfering and dictatorial governments. [Lyn Ladds (37)]
- The bill may negatively impact people with mental health problems or learning disabilities, two vulnerable groups with high incidences of smoking. However, it could be argued that it will positively impact these groups by addressing their smoking and health and encouraging positive change. The difficulty lies in getting the balance right. In the past we have seen that some financial sanctions have the opposite of their intended effect because instead of promoting behaviour change they merely financially penalise disadvantaged groups and further entrench inequality. The stigmatising of certain groups can reinforce negative behaviour. [Fast Forward (39)]
- Perhaps an equality issue may arise with those offenders on lower incomes who may be less likely to pay a fine and who may therefore end up with a referral to the Procurator Fiscal; however this issue is the same for all other driving offences. [NHS Lanarkshire (62)]
- Stigmatising smokers will be negative for parents who smoke and leaves them at risk of societal condemnation. Higher prevalence in lower SIMD areas - therefore potentially stigmatising people in relative deprivation. [Glenrothes and North East Fife Community Health Partnership, NHS Fife (82 to 86)]

Implementation

Question 10: What lead-in time should be allowed prior to implementation of the ban and how should the public be informed?

Respondents spoke of the need for public awareness-raising well in advance of a ban coming into force. The promotion of smoking cessation services and education on the dangers of second hand smoke during this period was recommended.

Recommended lead-in times varied from immediate implementation to 18 months and some of those responding called for an 'information and warning' stage both in the introduction of the legislation and in its implementation. Those looking for immediate implementation felt that the legislation was overdue.

A broad range of approaches for informing the public were supported. These included: mass media coverage – including social media, television and radio advertisements, notices in petrol stations, on electronic notice boards on motorways, promotion through schools to raise awareness among children, leafleting of households, inclusion in driving theory tests, notices at border and entry points.

Any other comments

Question 11: Do you have any other comments on or suggestions relevant to the proposal?

A broad range of supportive comments were received in response to this question. Some made the point that Scotland has led the way in the past with regard to exposure to cigarette smoke and should continue to do so.

Some wished the proposed legislation to go further – for example to prohibit smoking:

- while pregnant
- in the same room as a child
- in cars regardless of whether children are present
- in sports venues, play parks and other community settings
- on NHS premises.

A small minority of those responding took issue with the scientific evidence, argued that a fine was tantamount to a tax or argued that the ban would be difficult to enforce. The prospect of the proposal being at odds with Human Rights legislation was also raised by a small minority.

Some more additional points:

- Smoking in cars where children are present normalises the behaviour as well as damaging health. [NHS Orkney (3)]

- Anti-smoker and anti-tobacco measures ceased to be about health ages ago - it's now all about control ... and the measures used against smokers end up being used against other groups. [Paul Herring (30)]
- Measuring the impact of the law and levels of compliance would be a great help to other jurisdictions considering the implementation of such a measure. [Action on Smoking and Health (ASH) Wales (32)]
- Reducing children's exposure to second-hand smoke will play an important role in reducing the number of children who go on to become smokers in adulthood. Similar legislation has been successfully introduced in a number of other countries. This shows that the proposed legislation is workable and accepted by the public. [Cancer Research UK (41)]
- You can't inflict smoke on colleagues, so why should you be able to inflict it on children? [Royal College of Paediatrics and Child Health Scotland (47)]
- The proposed legislation could be effectively unenforceable [and] not achieve the aim of reducing the exposure of children to smoking in cars. [Tobacco Manufacturers' Association (TMA) (51)]
- Campaigns which aim to reduce smoking in the proximity of children are likely to be more effective drivers of behavioural change than unnecessary and burdensome legislation. [Tobacco Manufacturers' Association (TMA) (51)]
- Against a background of competing priorities it may be difficult for Police Scotland to enforce the proposed legislation. There is also the issue of accurately judging the age of a young person, whether offender or victim. [Fresh (Smoke Free North East) (53)]
- This is a forward-thinking proposal, and although it will meet resistance from smokers and the tobacco lobby, it will become an accepted pattern of social behaviour before long. [Cllr. Rob Merson (59)]
- In order to measure the impact of the law we recommend that a clause requiring the monitoring of the law should be included in the framework of the bill. Measuring compliance of the public places smoking ban was important to show efficacy and support for the law. [60 and 61, 72]
- Compliance with the 2006 law is very high, and from early on it has been largely self-policing. We would hope that the current proposal would have similar results [60 and 61,64, 69, 87]
- This Bill does not meet Better Regulation principles, so therefore we cannot support it. [Japan Tobacco International (68)]

SECTION 4: MEMBER'S COMMENTARY

Jim Hume MSP has provided the following commentary on the results of the consultation, as summarised in sections 1-3 above.

I wish to begin by expressing my thanks to the Non-Government Bills Unit (NGBU) and my researcher Craig Moran who have been vital in progressing my proposed Smoking (Children In Vehicles) (Scotland) Bill to this stage. I would also like to place on record my gratitude to all of those who took the time to respond to my consultation for their considered contributions and also thank the Minister for Public Health, Michael Matheson MSP, for his very constructive attitude during meetings to discuss my proposals.

The point of a consultation is to offer up your views for comment, analysis and to gauge public opinion. It's also an opportunity to enable people and organisations to argue the case for certain refinements. In both respects I believe that this consultation has been extremely successful.

As I expected, there were a large number of responses to the consultation, with 161 submissions being received by my office and I am delighted that 84% of those respondents have supported my proposed Bill. Support came from many quarters including children's organisations, health charities, the NHS, academics, public and the legal profession. The few opponents to my proposals were largely comprised of the tobacco industry and individual members of the public.

On all the key questions such as whether legislation was necessary and appropriate; the age of a child in a vehicle where smoking would be prohibited; the penalty for an offence and what vehicles should be subject to the legislation, my proposals achieved clear majorities. I am heartened by the wide endorsement of these proposals.

I was particularly pleased with the contribution by Charlie Common, a retired Chief Superintendent with Lothian and Borders Police who was a member of the Association of Chief Police Officers in Scotland (ACPOS) Road Policing Business Area and Commander for the Force's Operations Division (encompassing the Traffic Branch). He confirmed that Police Scotland are already adept at monitoring driving and detecting motoring offences, that my proposals should not be seen as being 'onerous' and that the Police would be in the best position to enforce the law as part of their normal duties. I hope the thoughts of an experienced and authoritative voice from a law enforcement background would assuage the fears of those with concerns over the enforceability of a law that has proven to be easily enforceable in other countries. I therefore propose that Police Scotland would be in the best position to enforce the law.

Concerns were raised by opponents of my proposals that they amounted to an interference of fundamental rights and were essentially an attack on human rights. These opponents invoked the Human Rights Act 1998 and Article 8 of the European Convention on Human Rights. However, the rights protected under Article 8 are not unqualified, particularly when dealing with the rights and freedoms of others, such as

children, and I believe any attempt to oppose my proposals in defence of human rights lack credibility. I firmly believe that my proposals enhance the rights of a section of our society – not erode them.

The consultation raised an issue regarding the Traveller community who may use motor vehicles as residential accommodation. In my consultation I stated: “The ban would apply irrespective of whether the vehicle was moving or stationary, on a road, a private driveway or any other private or public land”.

However, if the ban was to operate along such parameters this could lead to unintended consequences on a minority community who may use vehicles as their accommodation. It became clear that in proceeding with these proposals I would need to give careful thought to the precise wording of my final proposals and seek additional guidance to achieve a satisfactory and fair resolution to this particular matter.

I sought insight from contacts who have worked with the Traveller community for a number of years and I have taken on board the suggestions and views of colleagues. Any final policy decision I make will seek to strike an appropriate balance and be in the best interests of equality, without impinging on the rights of Travellers or holiday-makers to smoke in vehicles that are being used as residential accommodation. It is not part of my intention to infringe people’s existing right to smoke in their own homes, and this should apply equally to Travellers (and holiday-makers) staying overnight in vehicles.

As I stated in my consultation paper, it is common practice in other countries to mirror the fixed penalty for smoking in vehicles with that levied for equivalent motoring offences (such as using a mobile phone when driving). Whilst I made clear that this is a health, not motoring, issue I felt at the time that £60 represented a proportionate fixed penalty. It was noted, and is highlighted in the summary, that the £60 fixed penalties for such motoring offences, had increased to £100 after the publication of the consultation. A number of respondents argued for the fixed penalty under the Bill to be set at £100 in order to represent a sufficient deterrent.

There were some respondents who suggested a fixed penalty of £50 to mirror the penalty for smoking in an enclosed space as set out in the Smoking, Health and Social Care (Scotland) Act 2005. As I explained above, I was keen to follow the practice of other countries where the fixed penalty was kept in line with certain motoring offences which are enforced by the police service. I also believe that £50 would be too lenient a fixed penalty and this view appeared to be shared by many of the respondents. Of course, a fixed penalty is an alternative to prosecution, although failure to pay the fixed penalty within a stipulated timescale can lead to prosecution and the levy of a maximum fine upon conviction. The maximum fine for using a mobile phone whilst driving and for smoking in non-smoking premises is currently £1,000, which is a level 3 sanction on the standard scale of financial criminal penalties. I am persuaded that a fixed penalty of £100 and a maximum fine of £1,000 upon conviction for failing to pay the fixed penalty represent a proportionate and reasonable sanction. I therefore propose that the fixed penalty for an offence under my proposals be £100.

I note that some respondents argued in favour of a penalty taking the form of an educational course or smoking cessation class. Again I reiterate that my proposals are about protecting children from harmful second-hand tobacco smoke and not about forcing people into a personal choice they may not want to make when guilty of an offence.

To ensure uniformity of penalty for this offence I have decided against providing offenders a choice between a fixed penalty or education class. I have yet to see evidence that attendance at a class for such an offence is an effective law enforcement tool and deterrent, and therefore propose that only a fixed penalty with a maximum fine on conviction be the deterrent.

Perhaps the greatest range of views expressed over any aspect of the consultation was with regards to the age below which children and young people would be afforded protection under the proposals. Many were content with my suggestion that only those under 16 would be protected, many wanted to extend this to those under 18, while some wanted to include vulnerable adults and some wanted outright bans.

Several respondents believed I should widen the scope of my bill to include vulnerable adults, such as dementia sufferers, who would lack the capacity to consent to someone smoking or a sufferer of a serious lung condition who would be more susceptible to the effects of second-hand tobacco smoke. I have a lot of sympathy with these arguments and I certainly believe that vulnerable people should be protected from the effects of tobacco smoke. However, I believe that to include them in the Bill would risk making it unenforceable. While a police officer could reasonably be expected to determine, at the roadside, whether a passenger is under the age of 16 or 18, it would be difficult to determine whether they have (for example) dementia or a lung condition. Therefore I will not be widening the scope of my proposals in this regard.

What was clear is that those in favour of the aims of my proposals wanted protection for those under 16 years of age as a minimum – for many, setting the age-limit at 18 was their preferred choice. Respondents put forth very reasonable arguments in favour of their position and I do accept that raising the age limit for those protected to 18 would maintain a consistency with other legislation, particularly that governing the purchase and sale of tobacco to young people which is also 18. I therefore intend to extend the protection afforded by my proposals from children under 16 to all those under 18 years of age.

My consultation document sought views on setting the age of the offender at 16 or over. I received a great deal of support for this threshold, yet many responding argued that this should be raised to 18 while some argued that it should cover smokers of any age. As I have now decided to increase the age of young people being protected by my proposals, I have also had to reconsider the age of an offender. Discussions with the Law Society of Scotland helpfully pointed out that a difference in ages between the young person being protected and eligible to have committed an offence would potentially lead to uncertainty and confusion amongst the public. It was also suggested that raising the age would make enforcement easier.

I have reflected on all of these comments and I propose that the offender would be any person aged 18 or over who is smoking in the vehicle while another person aged under 18 is present. I have no wish to potentially criminalise those in the 16-18 category on the one hand while seeking to protect them with the same piece of legislation. I am also persuaded that my legislation should be consistent with the age at which young people are legally permitted to purchase tobacco products and for tobacco products to be sold to them.

The Law Society of Scotland made a reasoned argument, that the person committing the offence should only be the driver of the motor vehicle. I have decided against making only the driver criminally responsible as this would weaken the protection afforded to children travelling in vehicles, and risk creating a motoring offence, rather than an offence aimed at health protection.

My proposal is also in line with the seat belt law, which applies to all the adult occupants of the car, not just the driver. I also believe that it is unreasonable for a driver to be responsible for stopping other adults in a vehicle from smoking.

This consultation process has not only reinforced my belief that to introduce this law is the right thing to do, but has convinced me of the overwhelming support for it. I look forward to continuing to work with colleagues and partners across all sectors to ensure that Scotland's children are afforded the same protection as those in areas of Australia, Canada and the United States of America.

I therefore have decided to proceed with these proposals to the next stage of the legislative process. I thank the many Members who have already pledged their support to the proposal and hope that the results of this consultation will help to convince many more to join them. This is not and never has been a party political matter and I look forward to working constructively with others in the progress of this legislation in order to give our children a healthier start in life, by protecting them from the dangers of second hand smoke in the confined space of a motor vehicle.

Jim Hume MSP

ANNEXE

Proposed Smoking (Children in Vehicles) (Scotland) Bill

List of respondents to consultation

1	Alan Rodger	33	John Elliott
2	Bill Walker	34	NHS Dumfries and Galloway
3	NHS Orkney	35	Mark Lipscombe
4	Charlie Common, (Chief Superintendent (retired))	36	John Debicki
5	Dr Helen E Harris, Fife Rheumatic Diseases Unit	37	Lyn Ladds
6	Dr Scott Williamson	38	The Law Society of Scotland
7	Frank Stewart	39	Fast Forward
8	Geoff Earl	40	British Heart Foundation (BHF) Scotland
9	NHS Tayside	41	Cancer Research UK
10	Dr G B Drummond	42	Professor Amanda Amos - Joint submission from researchers in the field of tobacco control
11	NHS Western Isles	43	Dr Deborah Ritchie - Joint submission from researchers in the field of tobacco control
12	James Macfarlane	44	Dr Neneh Rowa-Dewar - Joint submission from researchers in the field of tobacco control
13	Lesley McKay	45	Thomas Tjelta - Joint submission from researchers in the field of tobacco control
14	Morag McConnell	46	Eddie Douthwaite
15	Gayle Robertson	47	Royal College of Paediatrics and Child Health Scotland (RCPCH)
16	NHS Forth Valley	48	Dr Sean Semple, Respiratory Group at the University of Aberdeen
17	Steven Tummons	49	Prof Graham Devereux, Respiratory Group at the University of Aberdeen -
18	Stuart Dalglish	50	Dr Stephen Turner, Respiratory Group at the University of Aberdeen -
19	Jan Robertson	51	Tobacco Manufacturers' Association (TMA)
20	Prof Judith Mackay, Asian Consultancy on Tobacco Control		
21	Common Thread Ltd		
22	The Royal Environmental Health Institute of Scotland		
23	Remedios Diaz		
24	Royal College of Physicians		
25	NHS Grampian		
26	Scotland's Commissioner for Children & Young People		
27	BMA Scotland		
28	Richard Puddlecoate		
29	James Burkes		
30	Paul J Herring		
31	Jeremy Hummerstone		
32	Action on Smoking and Health (ASH) Wales		

52	Community Health Exchange (CHEX)
53	NHS Health Scotland
54	Fresh (Smoke Free North East)
55	NHS Ayrshire and Arran
56	Institute of Occupational Medicine
57	Midlothian Liberal Democrats Local Party
58	British Lung Foundation Scotland
59	Councillor Rob Merson, Ellon and District Ward
60	Cancer Focus Northern Ireland
61	Action on Smoking and Health (ASH) Northern Ireland
62	NHS Lanarkshire
63	Stephen Bell
64	Action on Smoking and Health (ASH) Scotland
65	NHS Highland
66	Scottish Coalition on Tobacco (SCOT)
67	Freedom Organisation for the Right to Enjoy Smoking Tobacco (FOREST)
68	Japan Tobacco International
69	NHS Fife
70	Children in Scotland
71	Robin AG Bennett
72	Action on Smoking and Health (ASH)
73	Royal College of Physicians of Edinburgh
74	James Watson
75	NHS Lothian Tobacco Strategy Project Board
76	Imperial Tobacco
77	Confidential

78	Cross Party Group on Tobacco and Health
79	The International Coalition Against Prohibition (TICAP)
80	David Millar
81	Anonymous
82	Elaine Willmitt, Glenrothes and North East Fife Community Health Partnership, NHS Fife
83	Andrea Gray, Glenrothes and North East Fife Community Health Partnership, NHS Fife
84	Fiona Cook, Glenrothes and North East Fife Community Health Partnership, NHS Fife
85	Lorraine Ronalson, Glenrothes and North East Fife Community Health Partnership, NHS Fife
86	R Barclay, Glenrothes and North East Fife Community Health Partnership, NHS Fife
87	NHS Greater Glasgow and Clyde Smokefree Services
88	Michael J R Peel

